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1 ROUGH DRAFT

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 07CV3782

5 - - - - -x

6 MARK KAPITI,

7 Plaintiff,

8 -against-

9 RAYMOND W. KELLY, in his official
Capacity as Commissioner of the New York
10 City Police Department, Property Clerk,
NEW YORK CITY POLICE DEPARTMENT, and THE
11 CITY OF NEW YORK,

12 Defendants.

13 - - - - -x

14 100 Church Street
New York, New York

15 May 28, 2008
16 10:40 a.m.

17

18 DEPOSITION of GEORGE TRIFFON, a

19 non-party witness in the above-entitled

20 action, held at the above time and place,

21 taken before Brian Glickman, a Shorthand

22 Reporter and Notary Public of the State of

23 New York, pursuant to the Federal Rules of

24 Civil Procedure, Notice and stipulations

25 between Counsel.

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2 A I couldn't say.

3 Q Did Mr. Fodera have a
4 supervisor?

5 A Yes.

6 Q Who was that?

7 A That would be the commanding
8 officer of the unit, Robert Messner.

9 Q Is Mr. Messner a police officer?

10 A No.

11 Q Is Mr. Fodera?

12 A No.

13 Q Are they both attorneys?

14 A To my knowledge.

15 Q And what about Ms. Russo, is she
16 a police officer?

17 A No.

18 Q Is she an attorney?

19 A As far as I know.

20 Q Did Mr. Messner have a
21 supervisor?

22 A I couldn't say who his
23 supervisor was.

24 Q Did you ever deal with someone
25 named John Curry?

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2 A Sure.

3 Q What was his title?

4 A I believe he was another
5 executive officer.

6 Q Similar to?

7 A Robert Fodera.

8 Q All right. As far as you know,
9 has the structure of the Civil Enforcement
10 Unit changed since you've left?

11 A I don't know.

12 Q Let's focus on this case. Do
13 you have any independent recollection as
14 to what happened in this case?

15 A Specifically?

16 Q About the vehicle seizure.

17 A I have no independent
18 recollection of this case.

19 Q Other than you being called to
20 testify today, do you recall anything out
21 of the ordinary or unusual in the way your
22 office handled this case?

23 MR. HAZAN: Objection to form.

24 A I do not recall anything.

25 Q What role did you play with

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2 regard to this case, the Kapiti case?

3 A Again, I have no independent
4 recollection of my role.

5 Q Do you recall when you became
6 involved in it?

7 A I do not.

8 Q Do you remember when the vehicle
9 was seized?

10 A I do not.

11 MR. KESSLER: Off the record.

12 (Discussion off the record.)

13 MR. KESSLER: Could you mark
14 these, please, as Plaintiff's 1
15 through 11.

16 (Marked Plaintiff's Exhibits 1
17 through 11 for identification as of
18 today's date.)

19 MR. HAZAN: The witness requests
20 a copy of the transcript from
21 plaintiff pursuant to the federal
22 rules so that he can review and
23 correct it for any errors that may be
24 contained in the transcript.

25 MR. KESSLER: I'm still waiting

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2 page two is the oldest date?

3 MR. HAZAN: Objection to form.

4 A Based exclusively on the time
5 and date stamps that appear at the
6 beginning of each entry, I would say that
7 is a correct statement.

8 Q So the first entry on this, on
9 Plaintiff's Exhibit 1 would be the last
10 entry on page two?

11 MR. HAZAN: Note my objection to
12 form.

13 Q Is that correct?

14 A I would agree with that
15 assessment.

16 Q Okay. Look at the earliest
17 entry which would be the full entry on
18 page two, if you would, did you input that
19 entry?

20 A I have no independent
21 recollection of making this entry.

22 Q Take a look at the last line
23 where it says Honda Finance will take
24 possession, Honda signed HH file to basket
25 for approval, GT. Is GT you?

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2 A GT are my initials.

3 Q Would that mean that you put
4 this information into the computer?

5 A It is an indication that I made
6 that entry.

7 Q You have no independent
8 recollection of it though?

9 A I have no independent
10 recollection and it is not certain, but it
11 is an indication that I made that entry.

12 Q Do you have any recollection of
13 why you would have put this information
14 into the computer?

15 A None whatsoever.

16 Q And the date that this was
17 entered was what?

18 A Reading from the page it says
19 06-02-2006.

20 Q Other than the date and the time
21 stamp on this document, is it fair to say
22 you have no independent recollection of
23 this?

24 A Including the time and date, I
25 have no independent recollection of this.

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2 Q Correct?

3 A Right.

4 Q Do you have any recollection of
5 speaking with Honda?

6 A I do not.

7 Q Or anybody at Honda?

8 A I do not.

9 Q Let me show you what has been
10 marked Plaintiffs' Exhibit 10, tell me if
11 you recognize it?

12 A I don't recognize this specific
13 document, but again, the format looks
14 familiar to me.

15 Q Have you ever seen that document
16 before, to the best of your recollection?

17 A I don't remember.

18 Q Let me show you what has been
19 marked Plaintiff's Exhibit 11. The same
20 question, have you ever seen that before?

21 A I have not.

22 Q Do you have any recollection of
23 seeing that document?

24 A No recollection whatsoever.

25 Q Okay. On Plaintiff's

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2 Exhibit 11, do you have any recollection
3 of the substance of that letter?

4 MR. HAZAN: Objection to form.

5 A No.

6 Q Let's go back to Plaintiff's 1.
7 Can you tell me, Sergeant Triffon, if the
8 hearing for Mr. Kapiti ever took place?

9 MR. HAZAN: Objection to form.

10 Q The Krimstock hearing?

11 A I have no independent
12 recollection of whether or not it took
13 place.

14 Q Does this document help you?

15 MR. HAZAN: Objection to form.

16 A The document doesn't help my
17 independent recollection.

18 Q Does it indicate if a hearing
19 was held?

20 A I don't see any indication on
21 here as to whether or not a hearing was
22 held.

23 Q Does it indicate whether a
24 hearing was not held?

25 A That's really the same question.

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2 Q Only in reverse, but I'm just
3 making sure that it doesn't say anything
4 about whether a hearing was held or not,
5 correct?

6 MR. HAZAN: Objection to form.

7 A The hearing disposition line we
8 referred to before gives some indication
9 that no hearing was held.

10 Q That's the word no at the end of
11 that line?

12 A Correct.

13 Q Does it indicate why a hearing
14 was not held?

15 A Reading from the page, it states
16 needed by DA as evidence.

17 Q Is that why a hearing was not
18 held?

19 A I can't say for sure.

20 Q On the bottom of page one
21 continuing onto page two, there's an entry
22 dated 6-5-06, do you see that?

23 A I do.

24 Q The June 5th date is the same
25 date as is listed under hearing notice, do

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2 Q The next entry that would be on
3 page one of Plaintiff's 1, do you see the
4 date on that?

5 A You are referring to the entry
6 immediately above the June 5th entry?

7 Q Yes.

8 A The date reads 7-10-2006.

9 Q And that entry says awaiting.
10 DAR what does that mean?

11 A It seems to indicate awaiting
12 the district attorney's release.

13 Q And at the end of that it says,
14 "File to cabinet. GT." Those are your
15 initials again, although you don't have
16 specific recollection of that, correct?

17 A Correct.

18 Q Okay. I want to show you what
19 has been marked Plaintiff's 5, have you
20 ever seen it before?

21 A I can't say for certain if I
22 have ever seen this particular document,
23 but the format is familiar to me.

24 Q What is it familiar as?

25 A Part of a set of interoffice

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2 memos inside the police department. In
3 trial office I should say.

4 Q What's the date on this
5 document?

6 A Reading from the document, June
7 2nd, 2006.

8 Q And this is document Bates
9 stamped NYC 15 and turned over as part of
10 the discovery by the City. Whose
11 signature is in the middle of the page
12 there, if you know?

13 MR. HAZAN: Objection to form.

14 A I don't know.

15 Q You've never seen that signature
16 before?

17 MR. HAZAN: Objection.

18 A I don't remember, it doesn't
19 look familiar to me. I do not know.

20 Q Is there a date next to the
21 signature right underneath the signature
22 line?

23 MR. HAZAN: Objection.

24 A I see the digit, 6-2-06.

25 Q That correlates to the June 2,

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2 2006, at the top of the page, correct?

3 MR. HAZAN: Objection.

4 A Yes.

5 Q And below the signature it says
6 the name of Robert F. Messner, correct?

7 A Yes.

8 Q And he would be the man in
9 charge at the Civil Enforcement Unit?

10 A He's the commanding officer of
11 the Civil Enforcement Unit.

12 Q On the bottom of the page, the
13 left-hand side, do you see where it says
14 DAs release received verbal written?

15 A Yes.

16 Q Do you see the box to the left
17 of that?

18 A I do.

19 Q Do you see that it's checked?

20 A I do.

21 Q And do you see the word written
22 to the right is circled, correct?

23 A I agree.

24 Q What does that mean?

25 MR. HAZAN: Objection.

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2 A What does it mean?

3 Q Yes.

4 A I mean, I can just read from it
5 the same as you can. It says district
6 attorneys release received and the word
7 written is circled.

8 Q So a written release was
9 received and that box was checked off?

10 MR. HAZAN: Objection.

11 A It would seem to indicate that,
12 I can't say for certain that it was
13 actually received.

14 Q Do you know whose signature is
15 at the bottom right of the document?

16 A I don't.

17 MR. KESSLER: Off the record.

18 (Discussion off the record.)

19 Q Back on the record.

20 Let me show you what has been
21 marked as Plaintiffs' Exhibit 2.

22 A Okay. The document is Bates
23 stamped NYC 16 handed over as part of
24 discovery by the City, have you ever seen
25 this before.

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2 MR. KESSLER: Off the record.

3 (Discussion off the record.)

4 Q Back on the record. Let's go
5 back to Plaintiffs' Exhibit 3. Did you
6 prepare this letter, this memo?

7 A I don't have any independent
8 recollection of having prepared it. My
9 signature is at the bottom of the letter
10 indicating that I did.

11 Q Is there any reason for you to
12 believe that you did not prepare this
13 letter as you see it here today?

14 A You'd have to clarify the word
15 "prepare." This is a form letter used
16 within the police department. So likely I
17 did not draft it, but by having signed it,
18 I likely read it.

19 Q Explain that likely you did not
20 draft it?

21 A This letter is part of a
22 package, I believe, of three letters that
23 stay within the office generally as just
24 updates for the status of a case. The
25 language on each of them is typically

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2 exactly the same with changes only in the
3 date and the people involved.

4 Q And the car?

5 A And the vehicle. Dates, storage
6 numbers et cetera, so for sake of
7 clarification of my answer, it appears as
8 though I signed this letter, but the word
9 prepare again it's unlikely that I
10 actually drafted the letter in its
11 entirety.

12 Q Would you have filled in those
13 blanks that you indicated just a moment
14 ago?

15 MR. HAZAN: Objection.

16 Q Would you have filled in seizure
17 number, storage number, the date, the type
18 of car things like that?

19 A Possibly.

20 Q Who is it sent to, you said it
21 is part of a package, who is the assistant
22 commissioner, Civil Enforcement Unit?

23 MR. HAZAN: Objection. Is the
24 question who is that or is it who was
25 it sent to?

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2 Q This document is addressed to
3 whom, Sergeant?

4 A Based on the document in front
5 of me, it appears to be addressed to the
6 assistant commissioner of the Civil
7 Enforcement Unit, which to the best of my
8 recollection on the date -- at the time
9 the letter was dated was Robert Messner.

10 Q I'm going to show you what has
11 been marked Plaintiff's 4. Do you know
12 what that is?

13 A It appears to be the second of
14 three in-house letters that circulate the
15 Civil Enforcement Unit for informational
16 purposes.

17 Q And if you could, just for a
18 moment, go back to Plaintiff's 3, what was
19 the date on that?

20 A Plaintiff's 3 is dated June 2nd,
21 2006.

22 Q What about Plaintiff's 4?

23 A Plaintiff's 4 is dated June 2nd,
24 2006.

25 Q And from whom and to whom is

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2 this memo?

3 MR. HAZAN: Objection.

4 Q It's written by whom?

5 MR. HAZAN: Objection.

6 A Based strictly on the letter in
7 front of me, the line from says assistant
8 commissioner Civil Enforcement Unit.

9 Q And that was Mr. Messner at the
10 time?

11 A To the best of my knowledge on
12 June 2, 2006, that was Robert Messner and
13 it's addressed to the commanding officer
14 of the property clerk division.

15 Q Who is that?

16 A That I don't know, or that I
17 don't recall rather.

18 Q Is this one of the other parts
19 of the packet that you referred to moments
20 ago?

21 A Correct.

22 Q Of the three letters?

23 A Correct.

24 Q So Plaintiff's 3 is one,
25 Plaintiff's 4 is another?

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2 A Correct.

3 Q And would Plaintiff's 5 been the
4 third which I believe I've shown you
5 before?

6 A To my memory, this would
7 represent the third of the package that is
8 usually prepared together.

9 Q And it appears that all three
10 are dated the same date, correct?

11 A Correct.

12 Q Plaintiff's 4 indicates in bold
13 letters in the top there, the case has
14 been settled, please release the vehicle
15 to the properly identified bearer of
16 release showing valid ownership of the
17 vehicle, correct?

18 A That's what it says, yes.

19 Q Yet on the top right next to the
20 word settle it has the word "none," do you
21 see that?

22 A I do see that.

23 Q What does that mean?

24 MR. HAZAN: Objection.

25 Q If you know.

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2 A I do not know or rather I don't
3 recall.

4 Q But based upon these three
5 documents as a whole I guess, as of
6 June 2, 2006, the Civil Enforcement Unit
7 had released the vehicle to the properly
8 identified bearer of release showing valid
9 ownership of the vehicle correct answering
10 his questions for him?

11 MR. HAZAN: What?

12 MR. KESSLER: Are you answering
13 his questions for him?

14 MR. HAZAN: I certainly am not.

15 Q Okay.

16 A If the question is does this
17 indicate that June 2, 2006, the vehicle
18 was released --

19 Q No.

20 A Okay.

21 Q The question is as of June 2,
22 2006, The Civil Enforcement Unit had
23 released the vehicle and closed its case
24 regarding property clerk versus Mark
25 Kapiti?

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2 MR. HAZAN: Objection.

3 Q The vehicle involving Mr.
4 Kapiti, correct?

5 MR. HAZAN: Objection.

6 A No.

7 Q No?

8 A The documents you are referring
9 to and I have just looked over appear to
10 indicate an intent to release the vehicle.

11 Q So if I had -- if I was in
12 possession of let's say all three of these
13 documents and I went to the pound where
14 the car was held and I presented it with
15 proper identification as the owner, would
16 I get the vehicle back?

17 MR. HAZAN: Objection.

18 A First of all, I'm not
19 comfortable answering it as a
20 hypothetical. And even as a hypothetical
21 it's flawed in that, other than the third
22 marked Plaintiffs' Exhibit 5.

23 Q Yes?

24 A These documents stay within the
25 police department so --

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2 Q So let's use Plaintiff's 5.

3 A Okay.

4 Q I take that to the pound, show a
5 proper ID, do I get the car back?

6 MR. HAZAN: Objection.

7 A All other things -- I can't say
8 with certainty you would get the car back,
9 but the indication here is that the legal
10 bureau has authorized the release of the
11 vehicle. So I mean, you're stating simply
12 showing up with this one piece of paper
13 you are asking if that is enough to have
14 the car released, my answer would be no.

15 Q My question is Plaintiff's 5,
16 this letter, it says notice to vehicle
17 claimant's. Do you see the bottom
18 portion?

19 A Yes.

20 Q This letter gives the titled
21 owner authorization to claim the above
22 vehicle from the college point pound, then
23 next line, in capital letters, claim it
24 immediately. Do you see that?

25 A I do.

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2 Q Okay. So let me rephrase my
3 question. With the documents that this
4 letter says I have to have, the
5 certificate of title, notarized copy of
6 the title, government issued photo
7 identification, I take this to the pound,
8 the pound looks at it with the other
9 document, do I get the vehicle back?

10 MR. HAZAN: Objection.

11 A I mean, reading what you just
12 read it would indicate that to me, but I
13 can't testify that that's true.

14 Q What would make it not true?

15 MR. HAZAN: Objection.

16 A The letter appears to give
17 authority to the person named on it to
18 pick up the vehicle that's about the most
19 I can state.

20 Q If this didn't give me authority
21 to pick up my car or if this didn't give
22 the person named on here or entity
23 authority to pick up the car, then what
24 value would this document be?

25 MR. HAZAN: Objection.

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2 A I don't know.

3 Q I don't either. Okay. If you
4 wish to have a minute with the witness you
5 may, but writing notes down on your pad,
6 I'm not going to tolerate and I'm going to
7 ask for a copy of the notes that you are
8 making and crossing out if this continues?

9 MR. HAZAN: I'm not writing
10 notes on my pad.

11 MR. KESSLER: You wrote the word
12 no, you wrote the word which I can
13 read upside down, so please.

14 THE WITNESS: Can we take a
15 break then?

16 MR. KESSLER: Sure.

17 Off the record.

18 (Discussion off the record.)

19 (Brief recess was
20 taken.)

21 Q Back on the record. Just as a
22 statement for the record, and I know I
23 don't have to tell you this. You are the
24 one under oath. I don't want anything
25 that is not true, I don't want anything

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2 that is fabricated or false from your
3 testimony. Your attorney can say whatever
4 he wants, he's not the one under oath.
5 Okay. So if you don't know, you don't
6 know, if you do know, please give the
7 correct and truthful answer. That's all
8 I'm asking from you here.

9 Refer to Plaintiff's Exhibit 1
10 please. We said earlier bottom of page
11 one there is an entry on July 10, 2006, do
12 you see that?

13 A I do.

14 Q Which has your initials at the
15 end of the entry. Do you recall what
16 happened on or about July 10, 2006, that
17 caused you to make that entry?

18 A I do not.

19 Q Let me show you what has been
20 marked Plaintiff's Exhibits 6 and 7, do
21 these documents refresh your recollection
22 as to what may have happened on July 10,
23 2006, to cause you to make that entry?

24 A It does not refresh any
25 recollection, no.

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2 A I don't recall any calls from
3 leasing companies.

4 Q Do you recall any calls from tow
5 truck operators?

6 A No.

7 Q In June and July of 2006, was
8 there another George working at Civil
9 Enforcement unit?

10 A Not that I know.

11 Q Were you ever involved in a case
12 where there were competing claims to a
13 particular vehicle?

14 MR. HAZAN: Objection.

15 A None that I can recall.

16 Q To your knowledge, did there
17 come a time when you received a copy of
18 the district attorney's release in the
19 Kapiti case?

20 A Not that I remember.

21 Q Looking at Plaintiff's
22 Exhibit 1, does it refresh your
23 recollection?

24 A There's nothing in Plaintiff's
25 Exhibit 1 that refreshes my recollection

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2 as to whether or not I received or our
3 office received a district attorney's
4 release.

5 Q I'm going to go back for a
6 minute to Plaintiff's 3, 4 and 5, those
7 are the three documents, the packet that
8 you referred to?

9 A Okay.

10 Q This case involves Honda, so if
11 you want to relate it to this case you
12 may, but I'm asking more of a general
13 question, how is the release given to the
14 claimant of the vehicle when the vehicle
15 is returned to the claimant, how is that
16 done; is it mailed, is it picked up by the
17 claimant, in general in your experience,
18 how is that done?

19 MR. HAZAN: Objection.

20 A I definitely do not remember,
21 any of the above is certainly possible.

22 Q You indicated that Plaintiff's 3
23 and 4 are internal documents, correct?

24 A Correct.

25 Q So if a vehicle was being